

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN F. DROBNAK and DEPARTMENT OF THE TREASURY,
BUREAU OF ENGRAVING & PRINTING, Washington, DC

*Docket No. 00-2343; Submitted on the Record;
Issued June 13, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that he refused an offer of suitable work.

Appellant, a 41-year-old plate printer, filed a notice of traumatic injury alleging that on November 21, 1998 he injured his left wrist, elbow and shoulder in the performance of duty. The Office accepted appellant's claim for left lateral epicondylitis. On September 14, 1999 the Office entered appellant on the periodic rolls.

In a letter dated March 24, 2000, the Office found that the employing establishment had offered appellant a suitable work position and allowed him 30 days to accept the position or offer his reasons for refusal. The Office informed appellant of the penalty provision of section 8106 of the Federal Employees' Compensation Act.¹ Appellant did not respond and by decision dated June 16, 2000 the Office terminated appellant's compensation benefits.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work. Section 8106(c) of the Act³ provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or

¹ 5 U.S.C. §§ 8101-8193, § 8106.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ 5 U.S.C. § 8106(c)(2).

secured for the employee is not entitled to compensation. Section 10.517 of the applicable regulations⁴ provides that an employee who refuses or neglects to work after suitable work has been offered or secure for the employee, has the burden of showing that such refusal or failure to work was reasonable or justified, and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation. To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁵

The Office's procedure manual provides for review of the offered position to determine if the position is temporary. A temporary position will be considered unsuitable unless the claimant was a temporary employee when injured and the temporary position reasonably represents the claimant's wage-earning capacity.⁶ The Office must consider whether the type of appointment is at least equivalent to the date-of-injury position. If the employee's date-of-injury position was permanent, the Office may not find a temporary job to be suitable.⁷

In this case, there is no indication in the record that appellant's date-of-injury position was temporary. The position description submitted by the employing establishment indicates that the position of currency inspection data entry clerk is available for up to one year, a temporary position. The Office did not address this aspect of the case in determining whether the offered position was suitable. Therefore, the Office failed to meet its burden of proof to terminate appellant's compensation benefits.⁸

⁴ 20 C.F.R. § 10.517(a).

⁵ *Arthur C. Reck*, 47 ECAB 339, 341-42 (1995).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4(b) (December 1993).

⁷ FECA Bulletin No. 99-28 (issued August 30, 1999).

⁸ *Joyce R. Gill*, 49 ECAB 658 (1998).

The June 16, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
June 13, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member